

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

HEARTS ON FIRE COMPANY, LLC,

Plaintiff,

v.

EIGHTSTAR DIAMOND COMPANY and
GRS JEWELERS, INC.,

Defendants.

CIVIL ACTION NO. 04 12258-JLT

**AFFIDAVIT OF JESSICA W. MANCHESTER IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

I, Jessica W. Manchester, hereby depose and state as follows:

1. I am an attorney with DLA Piper Rudnick Gray Cary US LLP and am counsel to Hearts On Fire Company, LLC ("HOF"), the plaintiff in this matter. I submit this affidavit in Opposition to the motion of defendant EightStar Diamond Company, Inc.'s ("EightStar") for summary judgment in this matter, and to provide information regarding the discovery materials EightStar has promised yet failed to provide HOF. I make the following statements based upon my personal knowledge and upon review of the documents produced by EightStar and Grimball in discovery.

2. Attached as Exhibit A is a true and correct copy of the relevant portions of the deposition of Richard and Dana von Sternberg ("EightStar Dep."), the Rule 30(b)(6) designees of EightStar.

3. At the Rule 30(b)(6) deposition of EightStar, Dana von Sternberg testified that EightStar recorded trainings that occurred at annual EightStar dealership conferences. (EightStar

Dep. (Attached as Ex. A) at 150-151). He further testified that although some of the video tapes were destroyed, the 2003 and 2005 video tapes and possibly 2002 were not destroyed and could be copied. Id.

4. On January 31, 2006, counsel for HOF sent a letter to counsel for EightStar requesting that it produce the video tapes and other materials. A true and accurate copy of the 1/31/06 letter is attached as Exhibit B hereto.

5. On March 2, 2006, EightStar responded that it was “working on making copies of the 2005 tape” and would “produce them once complete.” A true and accurate copy of the March 2, 2006 response is attached as Exhibit C hereto.

6. On March 10, 2006, EightStar filed its Motion for Summary Judgment and supporting papers.

7. During the week of March 13, 2006, counsel for EightStar informed counsel for HOF that the video tapes were not yet ready. Accordingly, counsel for HOF and EightStar filed an assented-to motion to extend the filing deadline for HOF’s Opposition to EightStar’s motion for summary judgment until March 31, to allow HOF time to review the video tapes prior to filing its Opposition.

8. Despite receiving an extension to file its Opposition, HOF has not received the video tapes as of this date. On March 29, 2006, counsel for HOF sent counsel for EightStar another letter requesting the video tapes. Attached as Exhibit D is a true and accurate copy of the 3/29/06 letter.

9. Attached as Exhibit E is a true and accurate copy of a request for an extension from EightStar and eleven of its authorized retailers to the Trademark Appeal Board dated

January 2, 2003. This document was marked and authenticated as Exhibit 8 in the EightStar Dep.

10. Attached as Exhibit F is a true and accurate copy of an e-mail from Richard von Sternberg to EightStar retailers dated December 9, 2003. This document was marked and authenticated as Exhibit 13 in the EightStar Dep. and produced in discovery as document E00033.

11. Attached as Exhibit G is a true and accurate copy of an e-mail from Richard von Sternberg to EightStar retailers dated February 8, 2004. This document was marked and authenticated as Exhibit 14 at the EightStar Dep. and produced in discovery as documents E00035-E00039.

12. Attached as Exhibit H is a true and accurate copy of a comparison advertisement and e-mail. This document was marked and authenticated as Exhibit 10 at the EightStar Dep. and produced in discovery as document GRIM042-043.

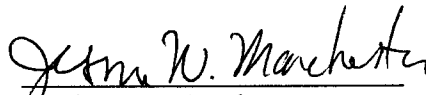
13 Attached as Exhibit I is a true and accurate copy of the Order and Consent Judgment and Permanent Injunction in Hearts on Fire v. E.R. Sawyers Corp., No. C 04-01913.

14. Attached as Exhibit J is a true and accurate copy of the PMSA Relationship Selling Program: An Overview & Selling EightStar® Diamonds” Training Manual. This document was marked and authenticated as Exhibit 5 at the EightStar Dep. and produced in discovery as documents E00090-00127.

15. Attached as Exhibit K is a true and correct copy of a later version of Exhibit A. This document was marked and authenticated as Exhibit 12 at the EightStar Dep and produced in discovery as document E00014.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 31 day of March, 2006.



Jessica W. Manchester